

ORIGINAL

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7 Attorneys for Plaintiffs
TRAFFICSCHOOL.COM, INC. and
8 DRIVERS ED DIRECT, LLC, California companies.

FILED
07 NOV -8 AM 11:00
CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES
MAD

9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA

12 TRAFFICSCHOOL.COM, INC.,
a California corporation; DRIVERS ED
13 DIRECT, LLC, a California limited
liability company,

14 Plaintiffs,

15 vs.

16 EDRIVER, INC., a California
17 corporation; ONLINE GURU, INC.,
FIND MY SPECIALIST, INC., and
18 SERIOUSNET, INC., California
corporations; RAVI K. LAHOTI, an
19 individual; RAJ LAHOTI, an individual;
and DOES 1 through 10,

20 Defendants.
21

Case No. CV 06-7561 PA (CWx)

The Honorable Percy Anderson

**PLAINTIFFS REQUEST FOR
JUDICIAL NOTICE AT TRIAL**

Date: November 8, 2007
Time: 10:00 a.m.
Crtm.: 15

1 TO DEFENDANTS AND THEIR ATTORNEYS OF RECORD:

2 Pursuant to Rule 201 of the Federal Rules of Evidence, Plaintiffs
3 TRAFFICSCHOOL.COM, INC. and DRIVERS ED DIRECT, LLC., ("Plaintiffs")
4 request that the Court take judicial notice of the following documents and facts:

- 5 1. Exhibit A and content therein: (Certified Copy of the record from the
6 United States Patent and Trademark Office regarding the April 24, 2007
7 Opposition Filed by the State of California's Department of Motor
8 Vehicles to eDriver, Inc.'s trademark application for the DMV.ORG
9 mark).

10 Federal Rule of Evidence 201(b) permits judicial notice of facts "not subject to
11 reasonable dispute" in that they are "either (1) generally known within the territorial
12 jurisdiction or the trial court or (2) capable of accurate and ready determination by
13 resort to sources whose accuracy cannot reasonably be questioned."

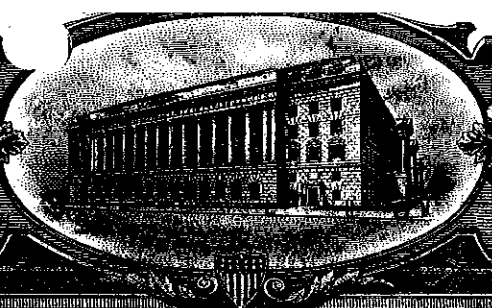
14 This request is proper as courts have taken judicial notice of "records and
15 reports of administrative bodies" *Interstate Natural Gas Co. v. Southern California*
16 *Gas Co.*, 209 F.2d 380, 385 (9th Cir. 1953)); *See also Denius v. Dunlap*, 330 F.3d
17 919, 926 (7th Cir. 2003) (stating that court may take judicial notice of information at
18 government agency's website); *Snyder v. Enterprise Rent-A-Car Co. of San*
19 *Francisco (ERAC-SF)*, 392 F.Supp.2d 1116, 1120 (N.D.Cal. 2005)(the court granted
20 requests for judicial notice of the records of the Department of Motor Vehicles
21 ("DMV")); *See Shaghoian v. Aghajani.*, 228 F.Supp.2d 1107, 1109 n. 4 (C.D.Cal.
22 2002) (taking judicial notice of DMV records).

23 DATED: Nov. 8, 2007

LEWIS BRISBOIS BISGAARD & SMITH LLP

24 By Mina I. Hamilton

25 Mina I. Hamilton
26 David N. Makous
27 Daniel C. DeCarlo
28 Attorneys for Plaintiffs
TRAFFICSCHOOL.COM, INC. and
DRIVERS ED DIRECT, LLC.



THE UNITED STATES OF AMERICA

TO ALL TO WHOM THESE PRESENTS SHALL COME:

UNITED STATES DEPARTMENT OF COMMERCE

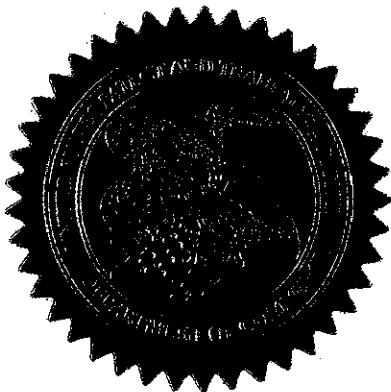
United States Patent and Trademark Office

October 26, 2007

**THIS IS TO CERTIFY THAT ANNEXED IS A TRUE COPY FROM THE
RECORDS OF THIS OFFICE OF THE FILE WRAPPER AND CONTENTS
OF:**

TRADEMARK OPPOSITION NUMBER: 91/176,917

**By Authority of the
Under Secretary of Commerce for Intellectual Property
and Director of the United States Patent and Trademark Office**



**M. K. CARTER
Certifying Officer**

ESTTA Tracking number: **ESTTA137220**Filing date: **04/24/2007**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Department of Motor Vehicles, State of California
Granted to Date of previous extension	04/28/2007
Address	Legal Office, M/S E128 P.O. Box 932382 Sacramento, CA 94232-3820 UNITED STATES
Correspondence information	Christopher J. Gill Senior Staff Counsel Department of Motor Vehicles, State of California Legal Office, M/S E128 P.O. Box 932382 Sacramento, CA 94232-3820 UNITED STATES cgill@dmv.ca.gov Phone:916-657-6469

Applicant Information

Application No	78777105	Publication date	02/27/2007
Opposition Filing Date	04/24/2007	Opposition Period Ends	04/28/2007
Applicant	eDriver, Inc. #591 9663 SANTA MONICA BLVD Beverly Hills, CA 90210 UNITED STATES		

Goods/Services Affected by Opposition

Class 035. First Use: 1999/03/02 First Use In Commerce: 1999/06/00
All goods and services in the class are opposed, namely: Advertising and commercial information services, via the internet; Advertising and marketing

Grounds for Opposition

Deceptiveness	Trademark Act section 2(a)
False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)
The mark is merely descriptive	Trademark Act section 2(e)(1)
The mark is deceptively misdescriptive	Trademark Act section 2(e)(1)
The mark is primarily geographically descriptive	Trademark Act section 2(e)(2)
The mark is primarily geographically deceptively misdescriptive	Trademark Act section 2(e)(3)
The mark comprises matter that, as a whole, is	Trademark Act section 2(e)(5)

functional	
Genericness	Trademark Act section 23
Other	15 USCS Secs. 1052(a), (d), (e)(1), and (e)(5); 15 USCS Secs. 1125(a)(1)(A) and (a)(1)(B).

Mark Cited by Opposer as Basis for Opposition

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	DMV (Department of Motor Vehicles)		
Goods/Services	Regulation of driver licensing, vehicle registration, and occupational licensees, including the oversight of licensed driver education schools. Publishes and disseminates various materials related to the licensing of California drivers and the registration of vehicles in this State, including the operation and maintenance of an official governmental web site (www.dmv.ca.gov).		

Attachments	DMV org Opposition2.pdf (1 page)(32787 bytes)
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Signature	/Christopher J. Gill/
Name	Christopher J. Gill
Date	04/24/2007

Summary of Opposition of the California Department of Motor Vehicles:

1. The use of "dmv.org" by a private entity violates 15 USCS Section 1125(a)(1) in that this designation falsely implies a connection or association with governmental entities that are commonly known throughout the country as the "DMV" and/or "Department of Motor Vehicles".
2. Use of "DMV" by a private entity is likely to cause confusion or mistake, or create the appearance that the trademark holder is sponsored or approved by a governmental entity, in violation of 15 USCS Section 1125(a)(1)(A). (See Cotrell, Ltd. v. Biotrol Int'l, Inc. 191 F.3d 1248, 1255-56 (7th Cir. 1999); Summit Tech, Inc. v. High-Line Med. Instruments, Co. 933 F.Supp. 918 (C.D.Cal. 1996).
3. By using "DMV" in a commercial manner/advertisement, the proposed trademark misrepresents the characteristics, qualities and/or origins of the advertised goods and services. (See Waits v. Frito-Lay, Inc., 978 F.2d 1093, 1108 (9th Cir. 1992).
4. Use of a trademark that is commonly used by governmental agencies is likely to cause public confusion, could result in the dissemination of inaccurate information about California legal requirements and, therefore, will adversely impact the ability of the State of California to administer and enforce its motor vehicle and related laws.
5. 15 USCS Section 1052(a) prohibits the registration of a trademark when it consists of a designation that is deceptive or falsely suggests a connection with an institution, including governmental institutions. In this instance, the proposed trademark "DMV.org" deceptively implies a connection with governmental regulatory agencies, including the California Department of Motor Vehicles or "DMV".
6. The proposed trademark would violate 15 USCS Section 1052(a)(d) in that it so resembles the "DMV" designation used for decades in California and other states that it is likely to cause confusion, mistake, or to deceive. The proposed mark closely mirrors the official web site of the California DMV, which is "www.dmv.ca.gov". California and approximately 21 other states use the designation "DMV" in their title and/or official publications.
7. The proposed trademark would violate 15 USCS Section 1052(e)(1) in that the phrase "DMV" is merely descriptive (and/or deceptively descriptive).
8. The proposed trademark would violate 15 USCS Section 1052(e)(5) in that the phrase, as a whole, is merely functional.

United States Patent and Trademark Office
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: April 24, 2007

Opposition No 91176917
Serial No. 78777105

R. JOSEPH TROJAN
TROJAN LAW OFFICES
9250 WILSHIRE BLVD STE 325
BEVERLY HILLS, CA 90212-3376
trojan@trojanlawoffices.com

Department of Motor Vehicles,
State of California

v.

eDriver, Inc.

Christopher J. Gill
Department of Motor Vehicles, State of California
Legal Office, M/S E128P.O. Box 932382
Sacramento, CA 94232-3820
cgill@dmv.ca.gov

ESTTA137220

A notice of opposition to the registration sought in the above-identified application has been filed. The notice of opposition can be viewed and printed at
<http://ttabvue.uspto.gov/ttabvue/v?qs=91176917>

ANSWER IS DUE FORTY DAYS after the transmission date hereof. (See Trademark Rule 2.196 for expiration date falling on Saturday, Sunday or a holiday).

Proceedings will be conducted in accordance with the Trademark Rules of Practice, set forth in Title 37, part 2, of the Code of Federal Regulations. The parties are reminded of the recent amendments to the Trademark Rules that affect the rules of practice before the TTAB. See Rules of Practice for Trademark-Related Filings Under the Madrid Protocol Implementation Act, 68 Fed. R. 55,748 (September 26, 2003) (effective November 2, 2003); Reorganization of Correspondence and Other Provisions, 68 Fed. Reg. 48,286 (August 13, 2003) (effective September 12, 2003). Notices concerning the rules changes, as well as the Trademark Trial and Appeal Board Manual of Procedure (TBMP), are available at www.uspto.gov/web/offices/dcom/ttab/.

The parties are particularly referred to Trademark Rule 2.126 pertaining to the form of submissions. Paper submissions, including but not limited to exhibits and depositions, not filed in accordance

with Trademark Rule 2.126 may not be given consideration or entered into the case file.

Discovery and testimony periods are set as follows:

Discovery period to open: May 14, 2007

Discovery period to close: November 10, 2007

30-day testimony period for party
in position of plaintiff to close: February 08, 2008

30-day testimony period for party
in position of defendant to close: April 08, 2008

15-day rebuttal testimony period
for plaintiff to close: May 23, 2008

A party must serve on the adverse party a copy of the transcript of any testimony taken during the party's testimony period, together with copies of documentary exhibits, within 30 days after completion of the taking of such testimony. See Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

NOTE: The Board allows parties to utilize telephone conferences to discuss or resolve many interlocutory matters that arise in inter partes cases. See the *Official Gazette* notice titled "Permanent Expansion of Telephone Conferencing on Interlocutory Matters in Inter Partes Cases Before the Trademark Trial and Appeal Board," 1235 TMOG 68 (June 20, 2000). The notice is available at <http://www.uspto.gov>. Interlocutory matters which the Board agrees to discuss or decide by phone conference may be decided adversely to any party which fails to participate.

If the parties to this proceeding are also parties to other Board proceedings involving related marks or, during the pendency of this proceeding, they become parties to such proceedings, they should notify the Board immediately, so that the Board can consider consolidation of proceedings.

New Developments at the Trademark Trial and Appeal Board

TTAB forms for electronic filing of extensions of time to oppose, notices of opposition, and inter partes filings are now available at <http://estta.uspto.gov>. Images of TTAB proceeding files can be viewed using TTABVue at <http://ttabvue.uspto.gov>.

ESTTA Tracking number:

ESTTA144244

Filing date:

06/05/2007IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91176917
Party	Defendant eDriver, Inc. eDriver, Inc. #591 9663 SANTA MONICA BLVD Beverly Hills, CA 90210
Correspondence Address	R. JOSEPH TROJAN TROJAN LAW OFFICES 9250 WILSHIRE BLVD STE 325 BEVERLY HILLS, CA 90212-3376 trojan@trojanlawoffices.com
Submission	Withdrawal Of Application
Filer's Name	Lauren Mirsky
Filer's e-mail	trojan@trojanlawoffices.com
Signature	/Lauren Mirsky/
Date	06/05/2007
Attachments	dmv.org express abandonment.pdf (1 page)(76127 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Department of Motor Vehicles, State of
California

Opposer,

v.

eDriver, Inc.,

Applicant.

Opposition No. 91176917

Re: DMV.ORG

Serial No.: 78/777105

**REQUEST FOR EXPRESS
ABANDONMENT**

CERTIFICATE OF TRANSMISSION

I hereby certify that this paper is being transmitted to the Trademark Trial and Appeal Board via ESTAA on the date shown below.

Lauren Mirsky

Date

/Lauren Mirsky/

June 5, 2007

REQUEST FOR EXPRESS ABANDONMENT

Applicant hereby expressly abandons U.S. Trademark Application Serial Number
78/777105.

Date: June 5, 2007

Respectfully submitted,

/Lauren Mirsky/

R. Joseph Trojan
Lauren Mirsky
Trojan Law Offices
9250 Wilshire Blvd., Suite 325
Beverly Hills, CA 90212

Attorneys for Applicant
eDriver, Inc.

ESTTA Tracking number: **ESTTA146218**Filing date: **06/15/2007****IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Proceeding	91176917
Party	Defendant eDriver, Inc. eDriver, Inc. #591 9663 SANTA MONICA BLVD Beverly Hills, CA 90210
Correspondence Address	R. JOSEPH TROJAN TROJAN LAW OFFICES 9250 WILSHIRE BLVD STE 325 BEVERLY HILLS, CA 90212-3376 trojan@trojanlawoffices.com
Submission	Other Motions/Papers
Filer's Name	Lauren Mirsky
Filer's e-mail	trojan@trojanlawoffices.com, mirsky@trojanlawoffices.com
Signature	/Lauren Mirsky/
Date	06/15/2007
Attachments	PS DVD WORLD TTAB .pdf (1 page)(76395 bytes)

PROOF OF SERVICE

I am over the age of 18 years, employed in the County of Los Angeles, and not a party to the above entitled action. My business address is 9250 Wilshire Blvd., Suite 325, Beverly Hills, California 90212.

On June 15, 2007, I served:

REQUEST FOR EXPRESS ABANDONMENT

by transmitting to:

Christopher J. Gill
Department of Motor Vehicles, State of California
Legal Office, M/S E128P.O. Box 932382
Sacramento, CA 94232-3820
Fax 916-657-6243
cgill@dmv.ca.gov

[X] BY FACSIMILE: I caused a copy of such document to be sent via facsimile machine to the office of the addressee(s) at the phone number shown above.

[X] BY MAIL: I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on the same day with postage thereon fully prepaid at Beverly Hills, California, in the ordinary course of business. I am aware that on the motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date of deposit for mailing shown on this proof of service.

[X] FEDERAL: I declare, under penalty of perjury under the laws of the United States that the foregoing is true and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on June 15, 2007 at Beverly Hills, California.

/s/
Michiko Speier

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

jh

Mailed: July 18, 2007

Opposition No. 91176917

Department of Motor
Vehicles, State of
California

v.

eDriver, Inc.

On June 5, 2007, applicant filed an abandonment of its application Serial No. 78777105.¹

Trademark Rule 2.135 provides that if, in an inter partes proceeding, the applicant files an abandonment without the written consent of every adverse party to the proceeding, judgment shall be entered against applicant.

In view thereof, and because opposer's written consent to the abandonment is not of record, judgment is hereby entered against applicant, the opposition is sustained and registration to applicant is refused.

***By the Trademark Trial
and Appeal Board***

¹ Applicant's proof of service of its abandonment on opposer filed June 15, 2007 is noted.

1 **PROOF OF SERVICE**
2 TrafficSchool.com, Inc. v. Edriver, Inc. - File No. 25162.14

3 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

4 I am employed in the County of Los Angeles, State of California. I am over
5 the age of 18 and not a party to the within action. My business address is 221 N.
6 Figueroa Street, Suite 1200, Los Angeles, California, 90012.

7 On Nov. 8, 2007, I served the following document described as
8 **PLAINTIFFS REQUEST FOR JUDICIAL NOTICE AT TRIAL**
9 on all interested parties in this action by placing [X] hand delivery and email to:

10 Brian M. Daucher, Esq.
11 Joseph H. Tadros, Esq.
12 bdaucher@sheppardmullin.com
13 jtadros@sheppardmullin.com

14 [X] (FEDERAL) I declare that I am employed in the office of a member of the bar
15 of this Court at whose direction the service was made.

16 Executed on November 8, 2007 at Los Angeles, California.

17 
18 MINA HAMILTON

LEWIS BRISBOIS BISGAARD & SMITH LLP

221 NORTH FIGUEROA STREET, SUITE 1200
LOS ANGELES, CALIFORNIA 90012-2601
TELEPHONE (213) 250-1800